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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER REICHL, KARIN M	
			ART UNIT 3761	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,633

Applicant(s)

NEUGEBAUER ET AL.

Examiner

Karin M. Reichle

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 24-26 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-16 and 24-26 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 01 November 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendments to the specification were not entered as they did not comply with 37 CFR 1.121 in that they show the amendments made to the last known, i.e. original text, e.g. where are the paragraph numbers of the amended claims? Therefore see discussion infra.

Specification

Drawings

2. The drawings were received on 9-4-08. These drawings are not approved. The proposed replacement sheets are of poor quality, i.e. not formal, and include new informalities, e.g. where are the page numbers? Therefore see the following paragraphs.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the

drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because Figure 2 and the description thereof are inconsistent, i.e. as best understood, Figure 2, shows more than just a cutting line, i.e. appears to show strips 1 and 2. In Figure 6c, the lines from 11 should be dashed. In Figure 3, 13 does not denote the user end. In Figure 6d, the line from the uppermost 11 should be dashed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and

informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Description

5. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: paragraph 2.

6. The disclosure is objected to because of the following informalities: The paragraph added before line 1 on page 1 should also include a paragraph number. The various sections of the application should be identified in accordance with 37 CFR 1.77(b). In Figure 3, what is "VI"?

Appropriate correction is required.

Claim Objections

7. Claims 14-15 and 25-26 are objected to because of the following informalities: In claim 14, lines 2-5 appear to be missing a word or words. In claim 15, line 3, "the two" should be --both--. In regard to claim 26, last line, after "structure", insert --.--.

Claim Language Interpretation

8. Other than the claim language “like a film” set forth in paragraph 18, the remainder of the claim language has not been explicitly and thereby will be given its usual, e.g. dictionary, definition. “Separate” as defined by the dictionary is “to space apart; scatter” and “macroscopic” is defined as “large enough to be perceived or examined without instrumentation, esp. as by the unaided eye”. See also Response to Arguments section *infra*. Due to the informalities set forth in the preceding paragraph, claim 14 is interpreted to require at least one of the area on lines 2-3 or the separate grip areas set forth on line 4-5, at a minimum.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1-3, 5-15, and 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Long et al ‘389 .

Claim 1: See the Claim Language Interpretation section *supra*, hereinafter also referred to as CLI, and ‘389 at the Figures and col. 3, lines 53 et seq, col. 15, lines 14-43, col. 16, lines 50-60, esp. line 60, col. 16, line 61-col. 17, line 31, col. 17, line 60-col. 18, line 16, col. 18, lines 32-59, col. 20, lines 17-60, col. 22, line 22-col. 23, line 18, col. 23, lines 53-56 , line, i.e. ‘389 teaches a fastening tape 36 for a hygiene item 10 which is a diaper having a fastening area, e.g. adjacent 38, for permanent fastening on the hygiene item and having a closing area 56 for simultaneous detachable joining to a surface of the hygiene item, a protruding section, e.g. adjacent 90, see, e.g., Figures 5-6, between the closing area and a tape end adjacent to the closing

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area, 90, wherein the protruding section has a “separate” grip area, see CLI, 54 and, e.g., col. 23, lines 53-56 (It is noted that the claim language “separate grip area” does not require individual pieces of material, only spacing), having a surface with a “macroscopic” structure (It is noted that the claim only requires the surface have some, i.e. “a”, structure, which is macroscopic”, i.e. “large enough to be perceived or examined without instrumentation, esp. as by the unaided eye” (emphasis added), i.e. requires only some type of non-instrumental perception at a minimum, see CLI and, e.g., col. 22, lines 22-59 and Figures. It is the Examiner’s first position that ‘389 explicitly teaches a surface having a “macroscopic” structure. In any case, i.e. the Examiner’s second position, since ‘389 teaches all the claimed structure and/or the dimensions, shapes and/or colors of the grip area, there is sufficient factual evidence for one to conclude that such area also inherently includes the same function thereof, i.e. surface having a structure which is “macroscopic”.

Claim 2: The separate grip area has a structurally separate component, see again col. 23, lines 53-56.

Claim 3: The structurally separate component is a film, see CLI, and, e.g., col. 16, lines 42-49, and thereby ‘429 at col. 16, lines 21-22, ‘389 at col. 23, lines 12-13 and col. 20, lines 38-51.

Claim 5: The structured surface has embossing, see col. 20, lines 38-60, especially lines 44-46 (It is noted that “emboss” is defined as “to decorate with or as if with a raised design”).

Claim 6: The embossing has a plurality of straight and/or curved lines, some of which are “joined” together, i.e. at least indirectly, see CLI and note “joined” includes either direct or indirect joining and the discussion of claim 5.

Claim 7: The grip area is arranged on a grip edge of the protruding section, see, e.g., portion of 54 adjacent 90 in Figures 5-6B.

Claim 8: The grip area is arranged with an offset to a tape end of the protruding section, e.g. the portion of 54 remote from 90 in Figures 5-6B or see 41 of 54 in Figure 10 (It is noted that the claim does not require the entirety of the grip area be offset).

Claim 9: The grip area is designed in strips and runs, at least in part, essentially along a grip edge and/or a tape end in its shape, e.g., 41 in Figures 5 and 6 adjacent 90, or alternating 41 in Figure 10, or col. 20, lines 52-60, col. 16, lines 50-60, col. 17, lines 8-30 and col. 18, lines 3-16 and 32-59.

Claim 10: The grip area runs in a meandering pattern, see discussion of claim 9.

Claim 11: The grip area is approximately the same distance from the closing area as from a tape end, see, e.g., the Figures, e.g. 41 in Figure 7 (It is noted that the specific portion of the grip which is so distanced has not been specifically claimed nor is such distance required to be greater than 0).

Claim 12: Only an inside of the fastening tape has a grip area, see, e.g., Figure 1 and Figures 5A-5B.

Claim 13: Only an outside of the fastening tape has a grip area, see Figures, the discussion of claim 12, the paragraph bridging cols. 14-15, col. 16, lines 18-28, i.e. 50 on the body facing/inward side and 54/56 on garment facing/outward side of 36 or see Figures and note that the claim does not require the outside be the garment facing side, i.e. the outside/tape end of the tape has a grip area.

Claim 14: Both sides of the fastening tape have a common grip area and/or separate grip areas, see CLI and, e.g., Figure 11-11A, elements 54 and 102 and col. 22, lines 54-65 or note that the two sides can be, e.g., upper and lower sides/halves of the same surface and Figure 9, element 54.

Claim 15: Two identically shaped and sized grip areas are provided on the two sides of the fastening tape, see, e.g., 54 in Figures 4, 5 and 6 and 102 in Figure 11 or the upper half of 54, i.e. on the upper side of line 9A-9A, and the lower half of 54, i.e. on the lower side of line 9A-9A (It is noted that the grip areas are not required to be spaced or spaced a particular distance from each other).

Claim 24: The closing area comprises a plurality of hooks 40.

Claim 26: See discussion of claim 1 and Figure 1.

Claim 25: The hygiene item closing area comprises a plurality of hooks 40 and the hygiene item further comprises a frontal tape 50 on an outside surface of the hygiene item, the frontal tape comprising a plurality of loops, see col. 16, lines 3-16, corresponding to the hooks, the hooks and loops forming a two component fastening system.

Claim Rejections - 35 USC § 102/103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 4 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Long et al '389.

Claim 4 requires the grip area be designed “like a film” and claim 16 requires two separate “film-like” grip areas having different macroscopic structures, see CLI and the discussion of the claims supra, esp. claims 1-2, 14-15 and ‘389 at col. 22, lines 21-53, 59-65 and the paragraph bridging cols. 22-23. Therefore it is the Examiner’s first position that ‘389 teaches a grip area “like a film” or two “film-like” grip areas as claimed with “sufficient specificity”, see MPEP 2131.03, i.e. the area is at least eight times the thickness. Even if ‘389 is not “sufficiently specific”, since the ranges of the ratios of area dimensions with respect to thickness dimensions of ‘389 “overlap or lie inside” claimed ranges, see CLI, (In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) (The prior art taught carbon monoxide concentrations of “about 1-5%” while the claim was limited to “more than 5%.” The court held that “about 1-5%” allowed for concentrations slightly above 5% thus the ranges overlapped.); In re Geisler, 116 F.3d 1465, 1469-71, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997) (Claim reciting thickness of a protective layer as falling within a range of “50 to 100 Angstroms” considered prima facie obvious in view of prior art reference teaching that “for suitable protection, the thickness of the protective layer should be not less than about 10 nm [i.e., 100 Angstroms].” The court stated that “by stating that suitable protection’ is provided if the protective layer is about’ 100 Angstroms thick, [the prior art reference] directly teaches the use of a thickness within [applicant’s] claimed range.”)), or do not overlap but are close enough to the claimed ranges that one skilled in the art would have expected them to have the same properties (Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (Court held as proper a rejection of a claim directed to an alloy of “having 0.8% nickel, 0.3% molybdenum, up to 0.1% iron, balance titanium” as obvious over a reference

disclosing alloys of 0.75% nickel, 0.25% molybdenum, balance titanium and 0.94% nickel, 0.31% molybdenum, balance titanium)), a prima facie case of obviousness exists. See MPEP 2144.05.

Response to Arguments

13. Applicant's remarks have been carefully considered but are either deemed moot in that such have not been re-raised or deemed not persuasive. For example Applicant's remarks with respect to the prior art rejection are narrower than/inconsistent with the claim language and specification, e.g. the claims and specification do not require "macroscopic" to be limited to visual perception or "microscopic/visible" (emphasis added) to the eye, the prior art rejection, e.g. the Examiner did not predicate the rejection on the interpreting anything to be "microscopic/visible" (emphasis added), and the teachings of the prior art, e.g. '389 teaches a surface having a "macroscopic" structure as claimed.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to the claims and the cancellation of claim 17 and the addition of claim 26.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

December 4, 2008

